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PHILIPS INTELLECTUAL PROPERTY & STANDARDS

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BRIARCLIFF MANOR, NY 10510

EXAMINER

SILVER, DAVID

ART UNIT

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2128

MAIL DATE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/598,188	Applicant(s) IJTSMA ET AL.	
	Examiner DAVID SILVER	Art Unit 2128	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/11/06</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

1. Claims 1-17 are pending in Instant Application.

Priority

2. Examiner acknowledges Applicant's claim to priority benefits of 04100761.8 **(2/26/2004)**.

Information Disclosure Statement

3. The information disclosure statement(s) (IDS) submitted on 12/11/2006 is/are in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement(s) is/are being considered if signed and initialed by the Examiner.

Drawings

4. Figure 1 should be designated as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

5. The use of the trademark "Explorer" has been noted in this application **(Spec, page 1)**. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

6. The Specification is objected-to for failing to follow USPTO Specification guidelines.

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

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- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
- (f) BACKGROUND OF THE INVENTION.
 - (1) Field of the Invention.
 - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

7. Appropriate correction is required.

Claim Interpretation

MPEP 2111.04 recites, in part:

Claim scope is not limited by claim language that suggests or makes optional but does not require steps to be performed, or by claim language that does not limit a claim to a particular structure. However, examples of claim language, although not exhaustive, that may raise a question as to the limiting effect of the language in a claim are: (A) "adapted to" or "adapted for" clauses; (B) "wherein" clauses; and (C) "whereby" clauses. (emphasis added by Examiner)

The determination of whether each of these clauses is a limitation in a claim depends on the specific facts of the case.

8. Limitations drawn to allowing, enabling, making capable of, making optional a function's performance, or "arranged to" perform, or "operative to" a perform a function do not further limit a claim. See MPEP 2111.04.
9. In claims 6 ("arranged to"), and ("operative to"), for example, the terms fails to properly limit the claim(s). The meaning of this term is not one that limits a claim to a particular structure, nor recites a functionally limiting language, nor recites required steps to be performed. It appears the language is equivalent to the "adapted to" which merely "allows" and makes optional something to happen / a feature to exist, but does not necessitate it. Accordingly, it does not further limit the claim. Therefore, patentable weight is not given to the relevant features. See MPEP 2111.04. The inconclusively of whether the term necessitates a function or not stems from the non-necessitated language within the Specification. For example, in paragraph 24-26, 33, the Specification recites that

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certain features "may" occur. Just because something may happen does not necessitate it to happen. Reviewing the claim, the limitation in its entirety correlates to the option of having the feature, but not necessarily its actual performance / structural presence. According to the MPEP, claims must be interpreted as broadly as possible in view of the Specification. Given that the Specification and the claims use the above-exemplified optional language, the broadest most reasonable interpretation of the term is to make the feature optional, and not necessitated. Therefore, the language is interpreted as not further limit and is not given patentable weight. This is further evidenced by a parallel comparison. Attention is drawn to MPEP 2106.01.I, which recites, in part: "Since a computer program is merely a set of instructions capable of being executed by a computer, the computer program itself is not a process", implying that the mere capability of being executed does not constitute the actual execution of a program and therefore classification of said program as a process (emphasis added).

10. Identical claim interpretation as presented above is for other claims which may be drawn to "enabling", "allowing" or being able to perform functions or have structural features without ever necessitating their existence. To further exemplify the case. An individual may be "able", "operable", "enabled", etc, to write with a pencil, or capable of writing with a pencil. However, the individual may not be writing with a pencil. In fact, the individual may not even be in possession of a pencil. Such ability, and enablement is not limiting in scope as the function and structure is not necessitated.

11. Claim 17 is not invoking 35 U.S.C. 112 sixth paragraph for the below emphasized reason:

MPEP 2181 Identifying a 35 U.S.C. - 2100 Patentability recites:

A claim limitation will be interpreted to invoke 35 U.S.C. 112, sixth paragraph, if it meets the following 3-prong analysis:

- (A) the claim limitations must use the phrase "means for" or "step for;"
- (B) the "means for" or "step for" must be modified by functional language; and
- (C) the phrase "means for" or "step for" must not be modified by sufficient structure, material or acts for achieving the specified function.

In view of MPEP 2181 (prong (C)), although the claims recite "means for" it is determined that the details following the "for" refers to intended use and does not invoke 35 USC 112 sixth paragraph. Specifically,

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the "means for" is drawn to program code, which is not physical element, but rather descriptive matter, *per se*, and is not associated with structure.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

MPEP 2106.01.I reads as follows:

Since a computer program is merely a set of instructions capable of being executed by a computer, the computer program itself is not a process and USPTO personnel should treat a claim for a computer program, without the computer-readable medium needed to realize the computer program's functionality, as nonstatutory functional descriptive material. When a computer program is claimed in a process where the **computer is executing** the computer program's instructions, USPTO personnel should treat the claim as a process claim. **

When a computer program is recited **in conjunction with a physical structure**, such as a computer memory, USPTO personnel should treat the claim as a product claim. **

MPEP 2106.01 reads as follows:

Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." In this context,

"functional descriptive material" consists of data structures and computer programs which impart functionality when employed as a computer component. (The definition of "data structure" is "a physical or logical relationship among data elements, designed to support specific data manipulation functions." The New IEEE Standard Dictionary of Electrical and Electronics Terms 308 (5th ed. 1993).)

"Nonfunctional descriptive material" includes but is not limited to music, literary works, and a compilation or mere arrangement of data. **Both types of "descriptive material" are nonstatutory when claimed as descriptive material per se**, 33 F.3d at 1360, 31 USPQ2d at 1759.

MPEP 2106 recites, in part:

"...USPTO personnel shall review the claim to determine it produces a useful, tangible, and concrete result. In making this determination, the focus is not on whether the steps taken to achieve a particular result are useful, tangible, and concrete, but rather on whether the **final** result achieved by the claimed invention is "useful, tangible, and concrete."

12. Claim 17 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

12.1 As per claim 17, the language is/are drawn to a computer program which is **neither executed by a computer, nor stored** on a physical structure. Therefore, the claim is drawn to descriptive material, *per se* and is therefore nonstatutory. The computer program is not actually run on a computer, nor is the computer claimed. The claim limitations of the "run" and the "computer" are merely intended use of the computer program.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of

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carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

13. Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being **indefinite** for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

13.1 There is insufficient antecedent basis in the following claim(s) for the limitation(s) enumerated below:

13.1.1 Claim 10, lacks antecedent basis for "the PC".

14. The above cited rejections are merely exemplary.

15. The Applicant(s) are respectfully requested to correct all similar errors.

16. Claims not specifically mentioned are rejected by virtue of their dependency.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

17. Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goodman (**US 20040230710**) in view of Cryer's "Test cd autorun without burning a cd", as evidenced by Microsoft's "How to Test Autorun.inf Files"

Goodman discloses: 1. Drive (2) for use in a computer (1) or a reproduction device for accessing a record carrier comprising:

an output means (21) for outputting a new media inserted message indicating that a new record carrier has been inserted in response to a new media inserted trigger event and for outputting file system

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data in response to a read request, **(Goodman para 23)**,

an input means (21) for receiving, in response to the output of said new media inserted message, said read request for reading and returning said file system data **(Goodman para 23)**, and

a carrier access means (20) for reading data from and/or recording data to a record carrier **(Goodman para 23)**.

Goodman however does not appear to expressly disclose: "irrespective of the physical insertion of a new record carrier", or "a trigger registration means (23) for checking the occurrence of said new media inserted trigger event".

Cryer, however, discloses an analogous simulation system having the said feature **(page 1: section "Autorun subst drive (not XP)" paragraph 4 (starting with "This will"))**.

Cryer, as evidenced by Microsoft, however disclose this feature **(Microsoft: page 1 section "MORE INFORMATION", sentence 1)**.

The combination discloses: 2. Drive as claimed in claim 1, wherein said trigger registration means (23) is operative for checking if a particular type of record carrier or a particular record carrier has been inserted into the drive (2) **(Microsoft: page 1 section "MORE INFORMATION" paragraph 2 starting with "However".)**.

The combination discloses: 3. Drive as claimed in claim 2, wherein said carrier access means (20) is operative for reading data from a predetermined location from said record carrier **(Goodman: para 0023: autorun.inf.)**.

The combination discloses: 4. Drive as claimed in claim 1, wherein said trigger registration means (23) is operative for checking if predetermined time duration has been elapsed or if a predetermined point in time has been reached **(Cryer: page 1 paragraph 2 from bottom, time being when the user clicks AutoPlay.)**.

The combination discloses: 12. Drive as claimed in claim 1, further comprising a user interface (24), in particular a user button, for inputting a trigger command,

in particular by pushing said user button, and wherein said trigger registration means (23) is

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operative for checking the occurrence of said trigger command (**Cryer: page 1 para 2 from bottom, when user clicks AutoPlay**).

The combination discloses: 13. Drive as claimed in claim 1, further comprising a memory means (22) for storing said file system data and wherein said output means (21) is operative for outputting said file system data stored in said memory means (22) in response to said read request (**Cryer: page 1: autorun.inf**).

The combination discloses: 14. Drive as claimed in claim 13, wherein said file system data including a link to a data file, in particular to an auto-run file or an application file, said data file being stored in said memory means (22) (**Cryer: page 1: autorun.inf**).

As per claim 15, note the rejection of claim 13 above. The Instant Claim recites substantially same limitations as the above-rejected claim and is therefore rejected under same prior-art teachings.

As per claim 16, note the rejection of claim 1 above. The Instant Claim recites substantially same limitations as the above-rejected claim and is therefore rejected under same prior-art teachings.

As per claim 17, note the rejection of claim 1 above. The Instant Claim recites substantially same limitations as the above-rejected claim and is therefore rejected under same prior-art teachings.

18. Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goodman (**US 20040230710**) in view of Cryer's "Test cd autorun without burning a cd", as evidenced by Microsoft's "How to Test Autorun.inf Files", and further in view of Virtual CD v5 ("Virtual CD").

As per claim 5, the combination discloses fully discloses claim 1. The combination however does not appear to expressly disclose "said trigger registration means (23) is operative for checking the occurrence of an eject command".

Virtual CD however discloses an analogous system having the said features (**page 25**).

In view of the KSR v. Teleflex Supreme Court ruling, it is asserted that one of ordinary skill in the art would have recognized that applying the known technique (using an eject function) would have yielded predictable results. Furthermore, one of ordinary skill in the art would have recognized that the results of

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the combination were predictable. Specifically, the base device is a drive, either a physical drive, or a virtual one. One would have known a technique of using an eject button, whether it is for a physical device or a virtual one. Additionally, one of ordinary skill in the art would have recognized that applying the known technique of ejecting a CD (or another data carrier, such as, for example, removable hard drive, USB, etc) would have yielded predictable results of unmounting the file system and ejecting the data carrier.

See MPEP 2145 [R-6], X, B, "[A] person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely that product [was] not of innovation but of ordinary skill and common sense. In that instance the fact that a combination was obvious to try might show that it was obvious under § 103." KSR International Co. v. Teleflex Inc., 550 U.S. ___, ___, 82 USPQ2d 1385, 1397 (2007).

Virtual CD discloses: 6. Drive as claimed in claim 1, comprising a local processor circuit arranged to execute a firmware program in response to a drive command, wherein said trigger registration means (23) is operative to respond to detection of an error during execution of the firmware program (**Virtual CD: page 52: section starting with "As a rule"; the virtual CD program is functionally equivalent to the firmware program. A "program", whether non-functionally labeled as "firmware" or not, is identical to any other executable program.**).

Virtual CD discloses: 7. Drive as claimed in claim 1, comprising a local processor circuit arranged to execute firmware programs in response to respective drive commands, wherein said trigger registration means (23) is operative to respond to detection of a drive command for which no substantial firmware program is available (**Virtual CD: page 20 section "Fast detection of bad sectors"**).

19. Claims 8-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goodman (**US 20040230710**) in view of Cryer's "Test cd autorun without burning a cd", as evidenced by Microsoft's "How to Test Autorun.inf Files", and further in view of Virtual CD v5 ("Virtual CD"), in view of CDFreaks.com's "New firmware for LTR-52246s and LTR-482465 dated 2003/01/03" ("CDFreaks").

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As per claim 8, the combination fully discloses claim 1. The combination however does not appear to expressly disclose that "the output means are arranged to simulate a file structure containing an autorun file, the autorun file containing one or more commands for downloading a firmware update for the drive via the Internet."

CDFreaks however discloses downloading a firmware update via the Internet (**page 1: post 1**). One of ordinary skill in the art would recognize that the autorun features of the parent claims can run arbitrary programs and commands. These commands include any programs, websites, documents, etc. One would recognize this technique as applicable to a firmware update program. One of ordinary skill in the art would also have recognized that this would yield a predictable update to the firmware program already in use.

See MPEP 2145 [R-6], X, B, "[A] person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely that product [was] not of innovation but of ordinary skill and common sense. In that instance the fact that a combination was obvious to try might show that it was obvious under § 103." KSR International Co. v. Teleflex Inc., 550 U.S. ___, ___, 82 USPQ2d 1385, 1397 (2007).

As per claim 9, note the rejection of claim 8 above. The Instant Claim recites substantially same limitations as the above-rejected claim and is therefore rejected under same prior-art teachings.

The combination discloses: 10. Drive as claimed in claim 8, wherein the drive contains a volatile firmware memory, and a local processor circuit arranged to load firmware from a memory device in a computer system that contains the drive into the firmware memory, the one or more commands being arranged to load the firmware update into the memory device in the PC (**page 1: The firmware disclosed in CDFreaks inherently is installed in a firmware memory for it to function.**).

As per claim 11, note the rejection of claims 1 and 8 above. The Instant Claim recites substantially same limitations as the above-rejected claims and is therefore rejected under same prior-art teachings.

Support for Amendments and Newly Added Claims

Applicants are respectfully requested, in the event of an amendment to claims or submission of new

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claims, that such claims and their limitations be directly mapped to the specification, which provides support for the subject matter. This will assist in expediting compact prosecution. MPEP 714.02 recites: "Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP § 2163.06. An amendment which does not comply with the provisions of 37 CFR 1.121(b), (c), (d), and (h) may be held not fully responsive. See MPEP § 714." **Amendments not pointing to specific support in the disclosure may be deemed as not complying with provisions of 37 C.F.R. 1.131(b), (c), (d), and (h) and therefore held not fully responsive.** Generic statements such as "Applicants believe no new matter has been introduced" may be deemed insufficient.

Requests for Interview

20. In accordance with 37 CFR 1.133(a)(3), requests for interview must be made in advance. Interview requests are to be made by telephone (571-272-8634) call or FAX (571-273-8634). Applicants must provide a detailed agenda as to what will be discussed (generic statement such as "discuss §102 rejection" or "discuss rejections of claims 1-3" may be denied interview). The detail agenda along with any proposed amendments is to be written on a PTOL-413A or a custom form and should be faxed (or emailed, subject to MPEP 713.01.I / MPEP 502.03) to the Examiner at least 3 days prior to the scheduled interview.

21. Interview requests submitted within amendments may be denied because the Examiner was not notified, in advance, of the Applicant Initiated Interview Request and due to time constraints may not be able to review the interview request to prior to the mailing of the next Office Action.

Conclusion

22. All claims are rejected.

23. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Silver whose telephone number is (571) 272-8634. The examiner can normally be reached on Monday thru Friday, 10am to 6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor,

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Kamini Shah can be reached on 571-272-2279. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Kamini S Shah/

Supervisory Patent Examiner, Art Unit 2128

/ DS /
David Silver, Patent Examiner
Art Unit 2128